IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 4TH APRIL 2007/14TH CHAITHRA 1930

RCRev..No. 64 of 2007(A)

(RCA NO.103/2004 OF RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM. RCP NO. 59/2003 OF IIIIRD ADDL.MUNSIFF & RENT CONTROL COURT, ERNAKULAM)

REVISION PETITIONER/RESPONDENT IN R.C.A & RESPONDENT IN RCP

K.KRISHNA KUMAR,
S/O.M.R.KRISHNA MENON, RESIDING AT 'NAYANAM',
NEAR VARMA CLINIC, NORTH FORT GATE,
TRIPUNITHURA.

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENT: APPELLANT IN RCA AND PETITIONER IN RCP

M/S.VRINDAVAN HOTEL (P) LTD.,
HAVING REGISTERED OFFICE AT C.C.XXXIX/2213, OF
COCHIN CORPORATION, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.P.K.RAVISANKAR
SRI.S.VINOD BHAT
SRI.K.P.DANDAPANI

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON 04/04/2007 PASSED THE FOLLOWING:

RCR NO.64/2007

ORDER IN I.A. NO.545 OF 2007 IN RCR NO.64 OF2007

DISMISSED

04/04/2007 **SD/- P.R.RAMAN, JUDGE**

SD/-ANTONY DOMINIC, JUDGE

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RCR NO.64/2007

ORDER IN I.A.NO.545 OF 2007 IN RCR NO.64/2007

DISMISSED

04/04/2007 **SD/-P.R.RAMAN, JUDGE**

SD/-ANTONY DOMINIC, JUDGE.

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P.R.RAMAN & ANTONY DOMINIC, JJ.
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R.C.R. NO.64 OF 2007
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Dated this the 4th day of April, 2007

O R D E R

Antony Dominic, J.

The tenant in RCP No.59/2003 on the file of the IIIrd Additional Munsiff and Rent Control Court, Ernakulam, whose eviction under Section 11 (4)(v) of the Kerala Buildings (Lease and Rent Control) Act 1965 (hereinafter referred to as 'the Act' for short) was affirmed by the Rent Control Appellate Authority by its judgment in RCA No.103/2004, is the Revision Petitioner.

2. According to the respondent/landlord, petition schedule premises belong to the respondent company and was let out to the tenant for business purposes in the year 1985 for a monthly rent of Rs.1,000/-. On the expiry of the initially agreed period of 5 years, the rent was enhanced to Rs.1,500/- and the tenant still continues to retain possession of the premises. It was alleged that the tenant conducted various businesses in the building, the last of which was a medical shop in the name and style 'Vinayaka Medicals' and that since 1997, he has not been conducting any business and the premises is remaining closed

since then. According to the landlord, the above facts constituted a case of cessation of occupation of the building, as provided for in Section 11(4)(v) of the Act, rendering the tenant liable to be evicted in terms of the said provision.

3. The tenant contended that he was still occupying the premises. According to him, he was initially conducting a business in readymade garments, thereafter ayurvedic medicines and still later a pharmacy store in the name and style of 'Vinayaka Medicals'. It was stated that the landlord had filed RCP No.80/96 seeking his eviction under Section 11(3) of the Act, which was dismissed by all Courts. He had alleged that in order to make it impossible for him to continue business in the premises, the landlord has been interfering in his occupation of the building in various ways. Power Supply to the premises was disconnected in 1997, which compelled him to move the Accommodation Controller by filing ACP No.3/2000 for getting the said amenity restored. He stated that the matter had to be fought upto this Court and finally electric supply was restored only in 2001. Due to want of power he had to wind up his pharmaceutical business and when efforts were made to make the premises suitable for alternate business, the landlord

prevented him by obtaining an order of injunction in O.S. No.1737 of 2000 filed in the Additional Munsiff's Court, Ernakulam. It was contended that since March/ April 2003, he has been utilising the premises for storage of cassettes, in connection with his business concern, 'Kalyani Audios', Diwan's Road, Cochin. According to him there has not been any cessation of occupation as contemplated in Section 11(4)(v) of the Act and that the petition deserved to be dismissed.

4. Before the Rent Control Court evidence was let in by both sides. On behalf of the respondent landlord, PW1, a Director of the company was examined and Ext.A1 was marked and on behalf of the petitioner/ tenant RW1, the tenant himself and RW2, the Advocate Commissioner, who submitted Ext.C1 report were examined. EXts.B1 to B7 series were also marked on behalf of the Revision Petitioner/ tenant.

5. Considering the evidence the Rent Control Court by its order dated 15th June 2004 held that there was cessation of occupation, rendering the tenant liable for eviction under Section 11(4)(v) of the Act and accordingly the tenant was ordered to vacate the petition schedule premises within a period of one month. The petitioner filed RCA No.103 of 2004 before

the Rent Control Appellate Authority, which was also dismissed by judgment dated 18.11.2006. It is aggrieved by the concurrent orders of eviction passed by the lower authorities that this revision petition is filed under Section 20 of the Act.

6. On behalf of the Revision Petitioner, Sri.K.P. Dandapani, Senior Counsel instructed by Sri.Varghese Kuriakose and on behalf of the respondent, Sri.R.D. Shenoy, Senior Counsel argued the case. To put the arguments of both sides in a nutshell, which the petitioner contended for the position that there has not been any cessation of occupation, the landlord contended for the position that the facts made out a case under Section 11(4)(v) of the Act. Both sides referred to us the pleadings, documents and the oral evidence in the case in support of their respective contentions.

7. We have considered the submissions made by the learned Counsel on either side.

8. Section 11(4)(v) of the Act provides that a landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building, if the tenant ceases to occupy the building continuously for 6 months without reasonable cause. This Section has been interpreted as

requiring the landlord who seeks eviction under this Section to establish not only that the tenant was not in occupation of the building without reasonable cause continuously for 6 months but also that he was not occupying the building on the date of petition. Once it is so proved by the landlord, then the burden would shift to the tenant to prove that he had reasonable cause for such non-occupation. However, in this case, tenant contents that he has been in occupation of the building and therefore, that is the dispute to be examined. It is essentially a question of fact depending upon the appreciation of evidence let in by both sides.

9. Bearing the above legal position in mind, it is necessary for us to appreciate certain admitted facts. It was in 1985 that the rental arrangement started for 5 years with the rent of Rs.1000/- per month and there after, the rent was revised to Rs.1500/- per month. On both reasons, the agreement between the parties did not specify any particular line of business to be carried on in the building. As stated by the tenant, initially he was engaged in the business of readymade garments, then in ayurvedic medicines and thereafter in pharmaceutical business under the name and style of ‘Vinayaka Medicals’. It was while so that in

1997, electricity supply was disconnected by the landlord which made the tenant move the Accommodation Controller by filing ACP No.3/2000 and ultimately power supply was restored in August 2001.

10. Meantime, the landlord filed O.S.No.1737 of 2000 before the Additional Munsiff's Court, Ernakulam seeking a decree of injunction against the petitioner and his wife, in which, by order dated 22.12.2000 in IA No.8599 of 2000, the Court passed an order of injunction restraining the respondents therein from subleasing or making permanent improvement in the building. Against the order of injunction, the petitioner and his wife filed an appeal as CMA No.150/2001, which was dismissed by the VIth Additional District Judge, Ernakulam by his judgment dated 6th June 2001, inter-alia observing as follows:

> "There is no need to interfere with the order of the lower court. But at the same time I, make it clear that the lower court's order will not be a bar for the Appellants in making use of the building by doing interior decorations in order to give a face-lift for profitable use. For correcting the leakage, plastering also can be done by the Appellants. With this modifications, in the lower court order, the appeal is dismissed. No costs."

The counsel on either side also admits that by judgment dated 31.01.2004, the suit has been decreed as prayed for. It was much after the judgment of the District Court, as admitted by

the tenant as RW1, that in March/ April 2003, he started using the building for storage of cassettes of Kalyani Audios, Diwan's Road, Cochin and that while so, petition was filed by the respondent on 22.05.2003 seeking his eviction.

11. The above admitted facts disclose that since 1997, following the disconnection of power supply there was cessation of occupation of the building and the tenant has no case that he carried on any business in the building during this period. Power supply was restored in August 2001 and even thereafter, the tenant did not occupy the building and he seeks to justify his alleged inability relying on the order of injunction that was obtained by the landlord on 22.12.2000 in I.A.No.8599 of 2000 in O.S.No.1737 of 2000. The fallacy of the argument is that the order continued only till 06.06.2001, when judgment was passed by the Additional District Court in CMA No.150 of 2001. In view of the judgment in CMA No.150/2001, though there was no impediment for the continued occupation of the building, even according to the Revision Petitioner, he started occupying the building again only from March/ April 2003, by storing cassettes of Kalyani Audios, Diwan's Road, Cochin.

12. We are not impressed by the argument that the order

dated 22.12.2000, passed by the Additional Munsiff's Court prevented the tenant from making use of the building and that contributed to his inability to utilize the premises. First of all, against the order of injunction passed by the Munsiff Court, the petitioner and his wife, had filed an appeal as CMA No.150/2001 which was dismissed by the Additional District Court, Ernakulam by judgment dated 06.06.2001, which we have already extracted hereinabove. On reading the judgment, it is evident that the tenant had the freedom to do interior decoration to make profitable use of the building and therefore, if he wanted, he could have occupied the building.

13. That apart, the suit itself was decreed ex parte as prayed for on 31.01.2004, which means that the contentions of the landlord have been admitted by the respondents therein and upheld by the Civil Court. It only means, that the landlord was justified in moving the civil court and obtaining an order of injunction. Even if such an order had the effect of preventing the tenant from continuing his activities, in view of the final judgment passed by the Civil Court, we have to conclude that what the tenant was carrying on, was an unauthorized activity. Therefore, the order passed by the civil court cannot be

projected to justify the default of the tenant in occupying the tenanted building.

14. The admitted facts disclose, that there has been cessation of occupation as provided in Section 11(4)(v) of the Act. Thus, the controversy narrows down to the disputed question, whether the tenant had in fact commenced occupation of the building in March/ April 2003. If our finding on this issue is in the affirmative, the necessary conclusion is that as on 22.05.2003, when the Rent Control Petition was filed, there has not been cessation of occupation by the tenant and if that be so, the petition under Section 11(4)(v) of the Act is liable to be dismissed.

15. Both the Rent Control Court and the Appellate Authority have, on evidence, concurrently found that there has been cessation of occupation and it is on that basis that eviction has been ordered. In order to examine the correctness of this finding, we have to refer to the case set up by the tenant and the evidence that was led by him in the proceedings.

16. RW2 is the Advocate Commissioner, who had visited the petition schedule building and submitted Ext.C1 report. The Commissioner deposed that the building appeared to be not in

use for a long period. He found the building locked with a collapsible shutter and a glass door on aluminium fabrication behind it. Though, he could only see the inside of the room through the shutter and the glass, all that he could notice was some old paper boxes, empty plastic bottle, damaged tubes etc. He also reported of having seen some wooden pieces, old sacks and plastic cans scattered inside the room. He also found the name board 'Vinayaka Medicals' to be dusty and damaged and another one turned upside down. Though, the witness was cross examined, the Rent Control Court found that nothing could be brought out to discredit his version or the report submitted by him. The only point that was raised was that before inspecting the building the Commissioner did not serve notice on the Revision Petitioner. The explanation of the Commissioner was that he made an attempt to serve notice on the petitioner at his address in the petition schedule premises. This explanation was acceptable to the Rent Control Court and taking note of the further fact that the Commissioner was already examined in the case, the court found nothing vitiating the report. This contention was reiterated before us also but we do not find any force in the submission.

17. Among the documentary evidence that was relied on by the tenant, Ext.B6 series, are the invoices of 'Kalyani Audios'. These invoice copies were produced, in an attempt to prove sale of cassettes to various customers and that the consignments were delivered from the petition schedule premises, on the strength of a rubber seal affixed on the invoices stating that "delivered from Vinayaka Medicals, Hotel Dwaraka Building, M.G. Road, Ernakulam. The Rent Control Court found the invoices to be dubious and suspicious and the reasons thereof are elaborated in the order. Although, the tenant while deposing as RW1 asserted that he started to use the premises from March/ April 2003, Ext.B6 series were of the period from April 2002 to January 2004. That apart, the story regarding 'Kalyani Audios' was also set up by the tenant only during the course of the evidence and was conspicuously absent in the statement of objection. Even the sales tax registration of 'Kalyani Audios' was not produced by the tenant although he had expressed his willingness to produce the same.

18. Ext.B6 series contained 13 invoices and for the period prior to March/ April 2003, there were 8 invoices starting from 08.04.2002 to 16.02.2003 and this contradicts his own case that

business commenced only during March/ April 2003. After Ext.B6(g) dated 16.02.2003, the next one Ext.B6(h) is dated 20.05.2003, followed by Ext.B6(i) dated 06.08.2003. The frequency of the bills, the absence of anything to prove ownership of the alleged 'Kalyani Audios', the absence of sales tax registration in the invoices, the tenants failure to produce the same and lack of proper pleadings were taken note of by the Rent Control Court to suspect the genuineness of Ext.B6 series. We may also add that these invoices do not include even one which pertains to March/ April 2003 when the tenant claims that he had started using the premises for storage of cassettes. The Rent Control Court found story unbelievable for the further reason that in a commercial nerve centre like M.G. Road, Cochin, the tenant was carrying on the business without even displaying a board.

19. The other piece of evidence that was relied on by the tenant was Ext.B5 series Electricity Bills. The Rent Control Court referred to this and found that Ext.B5 bill was dated 21.10.2002 in which the reading was noted 00085 and the consumption was Nil. Ext.B5(a) bill dated 20.08.2003 also noted reading as 00085 and consumption was Nil. Similar is the case which Ext.B5(c),

bill dated 17.04.2002 in which the previous reading was noted 00085, and the consumption was recorded as Nil. Ext.R5(b) dated 21.06.2003 also mentioned reading as 00085 and the consumption was shown as Nil. Despite the restoration of power supply to the building in August 2001 and the claim of the tenant that he has been carrying on business from the premises, during cross examination his explanation for the non-consumption of power was that the shop was functioning only during day time and hence it was not necessary to consume electricity. The Rent Control Court taking into account the fact that the invoices covered a period of almost 6 months, found it highly improbable and unbelievable that the tenant was carrying any business in the premises, without consuming even a single unit of energy during the aforesaid period. If the explanation of the tenant is to be accepted one wonders why the tenant waited till March/ April 2003 to start occupation of the premises.

20. The Rent Control Court referred to the evidence that was tendered by the tenant and found it to be inconsistent, contradictory and riddled with discrepancies. Analyisng the same in the light of the documentary evidence, the

Commissioner's report and the evidence as Ext.RW2, in the light of the judgments of this Court, the Rent Control Court held that there was cessation of occupation for a continuous period of more than 6 months and ordered eviction of the tenant. Having considered the findings of the Rent Control Court, as affirmed by the Appellate Authority, we do not find any error committed, warranting interference.

21. The Rent Control Court also dealt with the contention of the tenant that the signatory to the petition was not competent to represent the petitioner company. The objection apparently was that the signatory was not proved to be the Director of the Company and that in the petition the name of the representative was not mentioned in the cause title. The court held that it was not essential that the representative of a company should appear on the array of parties to the proceedings. Thereafter, referring to order XXIX Rule 1 of C.P.C., court held that when the suit is by a company it may be signed by a Director. The court also found that there was no specific contention in the objection in the pleadings regarding the incompetence of the signatory and making reference to Exts.B1, B3 and B4, the court found that the tenant himself had

accepted the signatory, who was examined as PW1, as a Director of the company in those proceedings and that he had no case that PW1 had ceased to be a Director thereafter. In the circumstances, the Rent Control Court held the contention to be false, vexatious and frivolous. PW1, admittedly being a Director, has the competence to represent the company. Since the petitioner had no case that PW1 had ceased to be a director of the company, we do not find any merit in this contention as well.

22. In RCA No.103 of 2004 filed by the tenant, also the contentions urged before the Rent Control Court were reiterated. The capacity of PW1 to represent the company has been examined and finding that he was a Director of the Company, the Appellate Court held that he had the competence to represent the respondent company. The Appellate Court has taken note of the previous proceedings to which the tenant is a party, where the capacity of PW1 was accepted by the tenant. Thereafter, the Appellate Authority proceeded to examine the ground under Section 11(4)(v) of the Act and re-appreciated the entire evidence and upheld the findings of the Rent Control Court.

23. As we have already noted, the fate of the petition turns on the question whether, on the evidence available, it was proved that the tenant had commenced the business of storing cassettes in the building as claimed by him from March/ April 2003. On the evidence that is available, including the oral evidence, it was concurrently held that it was not proved that the tenant had used the premises for business purposes and that there was cessation of occupation, rendering the tenant liable for an order of eviction under Section 11(4)(v) of the Act. Having anxiously considered the whole case, we see no error in the findings of the Rent Control Court as affirmed by the Appellate Authority and we fully endorse the findings entered by the lower authorities.

We do not find any merit in this Revision Petition and accordingly the Revision Petition will stand dismissed without any order as to costs.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

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